REMARKS

I. Introduction

Claims 12-22 are pending in the present application. Claim 12 has been amended. Claims 12-22 were rejected. In view of the foregoing amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration of the pending claims is respectfully requested.

II. Rejection of Claims 12-14 Under 35 U.S.C. § 102(b)

Claims 12-14 were rejected under 35 U.S.C. § 102(b) as being anticipated by German patent document DE 19835937A1 ("Juergen"). Applicants respectfully submit that the anticipation rejection should be withdrawn for at least the following reasons.

To anticipate a claim under § 102(b), a single prior art reference must identically disclose each and every claim element. See Lindeman Machinenfabrik v. American Hoist and Derrick, 730 F.2d 1452, 1458 (Fed. Cir. 1984). If any claimed element is absent from a prior art reference, it cannot anticipate the claim. See Rowe v. Dror, 112 F.3d 473, 478 (Fed. Cir. 1997).

Applicants note that the Juergen reference does not teach or suggest activating a service brake of a vehicle when an actual speed of the vehicle exceeds a predefined setpoint speed by more than a first predefined speed difference, "wherein the first predefined speed difference has a value greater than zero," as recited in amended claim 12. The amendment to claim 12 is clearly supported by the Specification. For example, in the substitute Specification, at page 6, lines 12-22, the first predefined speed difference is defined as being greater than the sixth predefined speed difference; at page 5, lines 19-23, the sixth predefined speed difference is defined as being greater than the fourth predefined speed difference; and at page 7, lines 9-11, and in FIG. 3a, it is indicated that the fourth predefined speed difference has a value greater than zero.

The Juergen reference discloses, e.g., in FIG. 3, that the vehicle speed V_{FAHR} is reduced by braking as soon as it becomes greater than a target speed V_{SOLL} at time t_2 when the HDC function is switched on at time t_1. Thus, the Juergen reference does not teach or suggest activating a service brake when the actual speed of the vehicle exceeds a predefined setpoint by

more than a first predefined speed difference which has a value greater than zero; instead, the Juergen reference activates braking when the vehicle speed merely exceeds the target speed.

For at least the foregoing reasons, independent claim 12 and its dependent claims 13-14, are allowable over the Juergen reference.

III. Rejection of Claims 15-22 Under 35 U.S.C. § 103(a)

Claims 15-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Juergen in view of U.S. Patent Application Publication No. 2005011321241 ("Glora"). Applicants respectfully submit that the obviousness rejection should be withdrawn for at least the following reasons.

The Applicants respectfully note that the Examiner has not cited the Glora reference in the Notice of References Cited (PTO-892) accompanying the 4/12/2006 Office Action. The Examiner is respectfully requested to cite the Glora reference in a Notice of References Cited. See MPEP 707.05 and 37 C.F.R. 1.104(d).

Furthermore, the Glora reference is not prior art relative to the present Application. The Glora reference has a U.S. filing date of October 26, 2004, and an alleged foreign priority date of October 30, 2003. By contrast, the present Application has a U.S. filing date of September 8, 2005, with an international application priority date of February 3, 2003 (from PCT/DE03/00292), and a foreign priority date of July 11, 2002 (from DE 10231360.1). Thus, the earliest alleged priority date of the Glora reference is after both the international application priority date and the foreign application priority date of the present Application. Therefore, the Glora reference is not prior art relative to the present Application.

Independent of the above, Applicants note that claims 15-22 depend directly or indirectly from independent claim 12, which is patentable over the Juergen reference for the reasons discussed above in regards to the 35 U.S.C. § 102(b) rejection. Furthermore, Glora fails to remedy the deficiencies of Juergen as applied against parent claim 12. Accordingly, even if Glora were deemed to be a valid prior art reference against the present application (which is not the case), it is respectfully submitted that dependent claims 15-22 are patentable over the combination of the Juergen and Glora references.

CONCLUSION

Applicants respectfully submit that all pending claims of the present application are now in condition for allowance. Prompt reconsideration and allowance of the present application are therefore earnestly solicited.

The Office is authorized to charge any fees associated with this Amendment to Kenyon & Kenyon LLP's Deposit Account No. 11-0600.

Respectfully submitted,

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